

Notice of Allowability**Application No.**

09/252,574

Applicant(s)

WALKER ET AL.

Examiner

Nicholas D. Rosen

Art Unit

3625

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERIT IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the RCE of 7/28/2008, and subsequent decision on the petition to revive.
2. ☒ The allowed claim(s) is/are 2-8,11,13-16,29-35,38 and 40-43.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of the:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
(a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
(b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____
7. ☒ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

/Nicholas D. Rosen/
Primary Examiner, Art Unit 3625

DETAILED ACTION

Claims 2-8, 11, 13-16, 29-35, 38, and 40-43 have been examined.

Examiner's Answer

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it **MUST** be submitted no later than the payment of the issue fee.

Authorization for this examiner's amendment was given in a telephone interview with James Kheit on November 10, 2008.

The application has been amended as follows:

In the ninth and tenth lines of claim 5, "determining which of at least two sellers of the plurality of sellers could satisfy a conditional purchase offer" is hereby amended to read, "determining, by a processor, which of at least two sellers of the plurality of sellers have the ability to provide the good or service and satisfy the conditional purchase offer".

In the ninth and tenth line of claim 32, "means for determining which of at least two sellers of the plurality of sellers could satisfy a conditional purchase offer" is hereby amended to read, "means for determining which of at least two sellers of the plurality of sellers have the ability to provide the good or service and satisfy the conditional purchase offer".

Claims 9, 10, 12, 36, 37, and 39 are hereby cancelled without prejudice.

Allowable Subject Matter

Claims 5, 2, 3, 4, 6-8, 11, and 13-16 are allowed.

Claims 32, 29, 30, 31, 33-35, 38, and 40-43 are allowed.

The following is an examiner's statement of reasons for allowance: The closest prior art of record, Hensley ("I'll Take Juarez"), discloses an allocation method in a buyer-driven system in which conditional purchase offers can be received and considered by or on behalf of a plurality of sellers, the conditional purchase offers including a buyer-specified price for a good or service (first page, fourteenth text paragraph et subsequ.). Hensley does not expressly disclose identifying one of at least two sellers as a priority seller, but by beginning with a particular seller, while knowing that there was another shop down the street (second page, fourth, fifth, and ninth paragraphs), Hensley implicitly identified that seller as a priority seller. Hensley discloses providing the priority seller with a first look opportunity to satisfy a conditional purchase offer (first page). Hensley does not disclose identifying one of at least two sellers as a priority seller based on a priority metric, but it is well known to identify a seller as a priority seller based on a priority metric, as taught by the anonymous article, "Electrical," (paragraph beginning "In spite of these changes," where a store being closest, and being most likely to have what the consumer wants are examples of priority metrics, as is having the best price, although that may arguably be inapplicable to a buyer-driven system).

Hensley does not disclose that conditional purchase offers include a payment identifier specifying a financial account identifier to be used to pay for the good or

service upon acceptance of a conditional purchase offer by a seller, but it is well known to specify financial account identifiers (see Table 3 in Abel et al., U.S. Patent 5,289,371) for example).

Hensley does not disclose that providing the priority seller with a first look opportunity to satisfy a conditional purchase offer is done after receiving the buyer-specified price, payment identifier, and authorization, but Abel teaches that payments are made immediately through subscriber's credit card accounts, implying that payment identifiers (e.g., credit card numbers) and authorizations have been received (column 13, line 55, through column 14, line 10).

Hensley does not disclose determining which of at least two sellers can satisfy a conditional purchase offer before identifying one as a priority seller, and certainly does not disclose making this determination with a processor, but does disclose determining that one seller could satisfy a conditional purchase offer (by seeing the desired product in his shop, first page). Abel teaches sending floral orders to a plurality of florists, not druggists or auto mechanics, but persons or firms whose participation in the flower business has given evidence of their ability to satisfy an order to deliver flowers (column 11, lines 16-41). However, Abel does not disclose determining which florists actually have the ability to provide the good or service and satisfy a conditional purchase offer. Similarly, Giovannoli (U.S. Patent 5,758,328) discloses filtering to send requests for quotations to sellers likely to be suited to provide the requested goods or services, but without determining that these sellers actually have the ability to provide the good or

service and satisfy a conditional purchase offer. No other prior art of record comes closer to meeting the claim limitation than Abel and Giovannoli.

The above has been written with particular reference to claim 5, but parallel claim 32 is allowable on essentially the same grounds. Claim 32 does not recite use of a processor, but does recite a system for allocation, where Hensley teaches a method applied by a human being, not a system or mechanism.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Giovannoli (U.S. Patent 5,758,328) discloses a computerized quotation system and method.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicholas D. Rosen whose telephone number is 571-272-6762. The examiner can normally be reached on 8:30 AM - 5:00 PM, M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jeffrey A. Smith can be reached on 571-272-6763. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300. Non-official/draft communications can be faxed to the examiner at 571-273-6762.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Nicholas D. Rosen/
Primary Examiner, Art Unit 3625
November 11, 2008